



The Federal Election Commission
Washington, DC 20463

MAR 22 2007

Marc E. Elias, Esq.
Perkins Cole, LLP
607 14th Street, NW
Washington, DC 20005

RE: MUR 5785
James E. Pederson
Pederson 2006 and Carter Olson,
in his official capacity as treasurer

Dear Mr. Elias:

On August 9, 2006, the Federal Election Commission ("Commission") notified your clients, James E. Pederson and Pederson 2006 and Carter Olson, in his official capacity as treasurer ("the Committee"), of a complaint alleging that your clients violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") and underlying regulations, and provided your clients with copies of the complaint.

After reviewing the allegations contained in the complaint, your response, and publicly available information, the Commission on March 6, 2007 found that there is reason to believe your clients violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv), and that the Committee also violated 11 C.F.R. §§ 400.21(a) and 400.22(a). However, the Commission found no reason to believe that the Act or regulations were violated with respect to the late filings with the Secretary of the Senate for personal candidate expenditures made on May 8, 2006, June 14, 2006 and July 20, 2006. Enclosed are the Factual and Legal Analyses that set forth the bases of the Commission's determinations.



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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public. We look forward to your response.

Sincerely,



Robert D. Lenhard
Chairman

Enclosures

Factual and Legal Analyses



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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: James E. Pederson MUR: 5785

I. INTRODUCTION

This matter was generated by a complaint filed by Glenn Hamer, and by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its responsibilities. The complaint alleges that Arizona senatorial candidate James E. Pederson ("Pederson") and Pederson 2006 and Carter Olson, in his official capacity as treasurer (the "Committee"), filed their initial 24- Hour Notice of Expenditures of Personal Funds ("Form 10") with the Commission and the Secretary of the Senate six days late, and filed a subsequent Form 10, disclosing \$275,000 in expenditures by Pederson, three days late. In addition, the complaint asserts that Pederson failed to timely file three additional Form 10s with the Secretary of the Senate, although it acknowledges that these Form 10s were filed timely with the Commission.

Based on the reasons outlined below, the Commission found reason to believe that James E. Pederson violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv) in connection with the two Form 10s filed untimely with the Commission and the Secretary of the Senate, and also found no reason to believe that Pederson violated 2 U.S.C. § 434(a)(6)(B)(iv) with respect to the three other Form 10s.

II. FACTUAL AND LEGAL ANALYSIS

A. Reporting of Personal Funds Expenditures to Both the Commission and the Secretary of the Senate

1. Facts

Pederson exceeded the \$648,720 threshold for Arizona senatorial candidates on March 31, 2006, when he contributed \$2,000,000 to the Committee, triggering the obligation to notify the Commission and the Secretary of the Senate on Form 10s within 24 hours of the expenditure, and again triggered the notification obligation with a subsequent candidate expenditure of \$275,000 on June 30, 2006.¹ However, the initial Form 10, disclosing \$2,000,000 in expenditures from Pederson's personal funds, was filed six days late, and a subsequent Form 10, disclosing \$275,000 in expenditures by Pederson, was filed three days late. In connection with the initial late filing, the Commission's Reports Analysis Division sent the Committee a Request for Additional Information ("RFAI") dated September 19, 2006, noting that the Form 10 appeared to have been filed untimely.

In response to the complaint, Pederson and the Committee concede these filings were untimely, and explain their initial late notification as stemming from a misunderstanding of the Millionaires' Amendment's requirements. They read Form 10—which is headed "24 Hour Notice of Expenditure From Candidate's Personal Funds"—to mean that their notification obligation was not triggered until 24 hours after the Committee expended more than \$648,720 of Pederson's funds, rather than 24 hours after the candidate expended personal funds by giving it to the Committee. See Exhibit B to the Response (Affidavit of Pederson

¹ Pederson was unopposed during his primary election.

Committee Compliance Officer Darryl Tattlie); *see also* Committee's identical October 11 and 16, 2006 Responses to RFAI, referencing the initial late notification and maintaining that it "makes every effort to file reports in a timely manner and ha[s] implemented procedures to ensure timely filing in the future." As for the second late filing, Pederson and the Committee assert that both the Committee's treasurer and assistant treasurer were traveling on June 30, 2006 for the July 4, 2006 weekend and could not be reached in time to avoid a late filing. *See* Exhibit B to the Response, *supra*.

2. Analysis

A Senate candidate or his or her principal campaign committee must notify the Commission, the Secretary of the Senate, and each opposing candidate when the candidate makes an expenditure from personal funds exceeding two times the threshold amount.² 2 U.S.C. §§ 434(a)(6)(B)(iii) and (v); 11 C.F.R. §§ 400.21(a) and 400.24. This notification must be received within 24 hours of the time such expenditure is made, *see* 2 U.S.C. § 434(a)(6)(B)(iii); *see also* 11 C.F.R. § 400.21(a), and notifications will be considered timely filed if received by each of the appropriate parties within that time period. 11 C.F.R. § 100.19(g). For each additional expenditure aggregating more than \$10,000, the candidate or his or her principal campaign committee is required to notify the Secretary of the Senate, the Commission and each opposing candidate in a Form 10 filing within 24 hours of the time such expenditure is made. *See* 2 U.S.C. § 434(a)(6)(B)(iv); *see also* 11 C.F.R. § 400.22(a).

² The threshold amount for United States Senate candidates is the sum of \$150,000 plus an amount equal to the voting age population ("VAP") of the state multiplied by 4 cents. *See* 11 C.F.R. § 400.9. In the case of Arizona in 2006, the threshold amount was \$324,360 (\$150,000 + (4,359,000 VAP x .04, or \$174,360). Thus, an amount that is two times the threshold amount is \$648,720 (\$324,360 x 2).

Because the Form 10s pertained to the primary election, in which Pederson was unopposed, notification of opposing candidates is not an issue in this matter.

69 Although the committee treasurer signs a Form 10, the candidate is responsible for ensuring
70 that it is filed in a timely manner. See 11 C.F.R. § 400.25.

71 In response to the complaint, Pederson and the Committee concede that they failed to
72 timely file the initial notification of Pederson's \$2,000,000 expenditure and subsequently
73 failed to timely file the notification of his \$275,000 personal expenditure. That they
74 misunderstood the legal requirements or failed to ensure the Form 10 was timely signed does
75 not negate the violations.

76 Therefore, there is reason to believe that James E. Pederson violated 2 U.S.C.
77 §§ 434(a)(6)(B)(iii) and (iv) in connection with the untimely filings of Form 10s with the
78 Commission and the Secretary of the Senate for candidate expenditures made on March 31,
79 2006 and June 30, 2006.

80 B. Reporting of Personal Funds Expenditures to the Secretary
81 of the Senate
82

83 The complaint also alleges that Pederson failed to file timely three additional Form
84 10s with the Secretary of the Senate, even though it acknowledges these forms were timely
85 filed with the Commission. The forms disclosed expenditures by Pederson amounting to
86 \$1,200,000 on May 8, 2006, \$250,000 on June 14, 2006, and \$459,098 on July 20, 2006.
87 Date and time stamps affixed by the Secretary of the Senate's office indicate that office
88 received the filings several days late. Pederson and the Committee claim they timely filed
89 these Form 10s with the Secretary of the Senate because they sent them by overnight mail,
90 and produced the supporting shipping receipts.³

³ According to Respondents, the Instructions for FEC Form 10 require that such forms should be delivered to the Secretary by hand or mail, and if sent, are timely as long as they are postmarked by the due date. They acknowledge that pursuant to 11 C.F.R. § 100.19, such forms are considered timely if those parties required to receive them electronically do so within 24 hours, but wrongly construe such parties to exclude the Secretary of the Senate. See discussion *infra*.

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91 Section 100.19(g) provides that Form 10s are considered timely filed if they are
92 received by each of the "appropriate parties," as identified in 11 C.F.R. §§ 400.21 and 400.22,
93 by facsimile or electronic mail ("e-mail") within 24 hours of the time the expenditures
94 triggering the notification obligations are made. The applicable regulations at sections 400.21
95 and 400.22, in turn, identify the Secretary of the Senate, as well as the Commission and each
96 opposing candidate, as the "appropriate parties" referenced in 11 C.F.R. § 100.19(g). Thus, a
97 Senate candidate's Form 10 is timely filed only if received by both the Commission and the
98 Secretary of the Senate within 24 hours. The Instructions for Form 10 provide only a physical
99 address and a P.O. box for the Secretary of the Senate, not a facsimile number or an e-mail
100 address. However, because all outside mail is first physically received off-site for irradiation,
101 a process that can take several days, even when the Senate's contractor timely receives the
102 mailings, the Secretary of the Senate's time-stamps will not reflect their receipt within 24
103 hours.

104 Therefore, the Commission finds no reason to believe that James E. Pederson violated
105 2 U.S.C. § 434(a)(6)(B)(iv) with respect to these three Form 10s.⁴

⁴ Complainant also maintained that there may be an issue whether the July 20, 2006 Pederson expenditure might have been made earlier than that date, based on a news report about a Pederson advertising campaign starting on July 21, 2006 that was purportedly funded by Pederson's expenditure. As this purported issue is purely speculative and Respondents have confirmed that the expenditure was made on July 20, 2006, as reported, the Commission does not believe that it warrants any further attention.